

REMARKS

The Office Action of December 22, 2003 states that the application contains claims directed to three species, shown in Figs. 4 (Species 1), 5 (Species 2), and 3 (Species 3). The Office Action further states that the three Species are patentably distinct and that no claim is generic. The Office Action requires the Applicant to elect a single disclosed species for prosecution on the merits.

Applicant submits that, under the Examiner's Species classification, the claims should be grouped as follows:

Species 1—claims 1-3, 5-8, 15, 16, and 19-21;

Species 2—claims 4, 6, 9-13, 17, 18, 23, and 24; and

Species 3—claims 14 and 22.

Applicant provisionally elects to prosecute the claims of Species 1 (claims 1-3, 5-8, 14, 16, and 19-21), with traverse.

Applicant submits that the Examiner's classification of Figs. 4 and 5 as defining two different species of the invention is improper, as the claims corresponding to these figures are not mutually exclusive of one another. MPEP 806.04(f) discusses this aspect of a proper species restriction as follows:

Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.

(MPEP 806.04(f), emphasis added). Applicant submits that the claims corresponding to Figs. 4 and 5 are not mutually exclusive under the disclosure. Fig. 4, for instance, includes a number of elements, including a character specific gap inserter 404. Fig. 5 is a diagram illustrating an implementation of character specific gap inserter 404. (See Spec., paragraph 41). Thus, under Applicant's disclosure, claims drawn to these two figures cannot be mutually exclusive, as Figs. 4 and 5 merely illustrate various levels of detail of the same embodiment. This is further supported by the fact that claims 4 and 6, which are in Species 2, depend from claims in Species 1. Similarly, claims 17 and 18, which are in Species 2, depend from claims in Species 1.

For at least these reasons, Applicant submits that the claims drawn to Species 1 and 2 should both be examined.

Further, Applicant submits that claim 1 (Species 1) is generic to claim 14 (Species 3). Upon the allowance of any generic claim, Applicant respectfully requests rejoinder of all applicable non-elected claims.

Applicant further traverses the restriction requirement on the grounds that there is no undue burden on the Examiner necessitating the election. The number of claims is not excessive.

To the extent necessary, a petition for an extension of time under 37 CFR 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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